



MAY 03 2002

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|  |   |                |
|--|---|----------------|
| In re Application of                             | : |                |
| Kivisto  | : |                |
| Application No.: 09/980436                       | : | DECISION ON    |
| PCT No.: PCT/FI00/00480                          | : |                |
| Int. Filing Date: 30 May 2000                    | : | PETITION UNDER |
| Priority Date: 17 June 1999                      | : |                |
| Attorney Docket No.: OUTO 2368                   | : | 37 CFR 1.10(e) |
| For: Element For Separating An Electrolytic Tank | : |                |

This is a decision on applicant's "Reply To Notification Of Missing Requirements" filed on 28 February 2002, which has been treated as a petition under 37 CFR 1.10(e).

### **BACKGROUND**

This international application was filed on 30 May 2000 and claimed an earlier priority date of 17 June 1999. The International Bureau communicated a copy of the published international application to the USPTO on 28 December 2000. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Consequently, the thirty period for payment of the basic national fee in the United States expired as of midnight on 17 December 2001.

On 29 November 2001, applicant filed the basic national fee, accompanied *inter alia* by a surcharge under 37 CFR 1.492(e).

On 29 January 2002, a Notification of Missing Requirements was mailed to applicant, requiring the filing of an oath or declaration of the inventors.

Applicants filed the instant correspondence on 28 February 2002.

### **DISCUSSION**

Review of the record reveals that the instant correspondence, including an executed declaration, was filed on 28 February 2002, within the period for response to the Notification of Missing Requirements mailed on 29 January 2002. However, applicant requests that the declaration be accorded a filing date of 04 January 2002 based on Express Mail evidence.

37 CFR 1.10(e) provides for the assignment of a filing date for correspondence filed by Express Mail but not received in the Office. However, the instant submission is not in compliance with 37 CFR 1.10(e). In particular, the copy of the Express Mail mailing label does not clearly show the "Date In" or other USPS notation of the date of mailing as Express Mail, as required by 37 CFR 1.10(e)(3). Also, the submission does not include a statement

which establishes to the satisfaction of the Commissioner that the papers filed on 28 February 2002 are true copies of the papers allegedly filed by Express Mail on 04 January 2002. Therefore, it would be inappropriate to grant the requested relief on the basis of the present record.

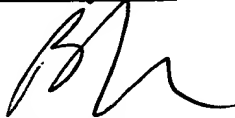
**DECISION**


The request to treat the declaration as filed on 04 January 2002 is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(e)."

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing, including the preparation and mailing of a Notification of Acceptance (Form PCT/DO/EO/903). The date of this application under 35 U.S.C. 371 is **28 February 2002**.

  
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